

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Cottonwood Energy Company LP

Docket No. ER05-483-002

ORDER APPROVING PARTIAL UNCONTESTED SETTLEMENT

(Issued November 8, 2006)

1. On May 19, 2006, Cottonwood Energy Company LP (Cottonwood) and Entergy Services, Inc., on behalf of itself and the Entergy Operating Companies<sup>1</sup> (Collectively Entergy) (Settling Parties) filed a Partial Settlement Agreement (Settlement Agreement) in the above-captioned docket. The Settlement Agreement will resolve all issues set for hearing in Docket No. ER05-483-000 for the period of February 1, 2005, through October 31, 2005, without the need for an evidentiary hearing or any further proceedings regarding those issues.

2. On January 24, 2005, Cottonwood filed its proposed Rate Schedule FERC No. 2 (Cottonwood Rate Schedule) along with testimony and cost data supporting the specified revenue requirement for the provision of Reactive Supply and Voltage Support from Generation Sources Service (Reactive Supply Service) to Entergy Gulf States, Inc. By order issued March 23, 2005, the Commission accepted the Cottonwood Rate Schedule for filing, suspended the proposed rates for a nominal period to become effective February 1, 2005, subject to refund, and established hearing and settlement judge procedures.<sup>2</sup> The subject settlement is a result of those procedures and reduces Cottonwood's initially filed charges for Reactive Supply Service from Entergy.

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<sup>1</sup> Entergy Services, Inc. is a service affiliate of Entergy Gulf States, one of the Entergy Operating Companies. The Entergy Operating Companies include Entergy Arkansas, Inc., Entergy Gulf States, Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

<sup>2</sup> *Cottonwood Energy Co. LP*, 110 FERC ¶ 61,303 (2005).

3. On October 28, 2005, Entergy filed a complaint against Cottonwood in Docket No. EL06-13-000, in which it requested that the Commission issue an order prohibiting Cottonwood from charging for reactive supply service under the Cottonwood Rate Schedule as of November 1, 2005. Entergy also requested that the Commission limit Docket No. ER05-483-000 to determining Cottonwood's reactive power revenue requirement under the Cottonwood Rate Schedule for the period of February 1, 2005 through October 31, 2005 (Locked-in Period). Cottonwood answered the complaint and argued that the scope of Docket No. ER05-483-000 includes the issue of whether Cottonwood's interconnection agreement with Entergy Gulf States provides an independent contractual right to recover the reactive power revenue requirement under the Cottonwood Rate Schedule (contractual right issue).

4. On April 10, 2006, the Commission issued an order denying the complaint in Docket No. EL06-13-000.<sup>3</sup> The Commission ordered that the contractual right issue be addressed in the hearing in Docket No. ER05-483-000. The Commission observed that the Chief Administrative Law Judge could consolidate the hearing in the afore-mentioned docket with other pending proceedings which also the contractual right issue for compensation from Entergy for the provision of reactive supply service within the band.<sup>4</sup> By order issued April 25, 2006, the Chief Administrative Law Judge consolidated the proceedings for the purpose of considering motions for summary disposition of the contractual rights issue.

5. The parties agree to a negotiated one-time payment of \$600,000 made by Entergy to Cottonwood for Reactive Supply Service for the Locked-in Period.

6. Initial Comments in support of the settlement were filed by the Commission's Trial Staff on May 21, 2006. No other comments were filed, and on June 22, 2006, the settlement was certified to the Commission as uncontested.<sup>5</sup>

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<sup>3</sup> *Entergy Services, Inc. v. Cottonwood Energy Company LP*, 115 FERC ¶ 61,031 (2006).

<sup>4</sup> Docket Nos. ER05-1419-000, ER05-1394-000, ER05-1358-000, and ER05-977-000.

<sup>5</sup> *Cottonwood Energy Company LP*, 115 FERC ¶ 63,075 (2006).

7. The subject settlement is fair and reasonable and in the public interest and is hereby approved. The tariff sheets contained in the settlement are in compliance with Order No. 614 and are made effective as noted in the settlement. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221 (FERC Statutes and Regulations, Regulations Preambles July 1996 – December 2000 ¶ 31,096 (2000)). The Commission’s approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The settlement provides: “With respect to this Agreement, it is intended that the parties be subject to the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956)(the “Mobile-Sierra” doctrine). This Agreement is not intended to subject the Commission to the “public interest” standard of review in acting on its own motion with respect to this proceeding or the Revised Cottonwood Rate Schedule.” Accordingly, the Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824(e) (2000).<sup>6</sup>

8. Within thirty days from the date of this order, any amounts collected in excess of the settlement rates shall be refunded together with interest computed under section 35.19a of the Commission’s regulations, 18 C.F.R. § 35.19a (2006). Within fifteen days after making such refunds, Cottonwood shall file with the Commission a compliance refund report showing monthly billing determinants, revenue receipt dates, revenues under the present and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period. Cottonwood shall furnish copies of the report to the affected customers and to each state commission within whose jurisdiction the affected wholesale customers distribute and sell electric energy at retail.

9. This order resolves the issues set for hearing for the Locked-in Period of this proceeding of February 1, 2005 through October 31, 2005. For the period commencing November 1, 2005, the proceeding is subject to the April 25, 2006

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<sup>6</sup> The standard of review applicable to contracts and agreements subject to the Commission’s jurisdiction does not affect the rights of a party that seeks to make a contract or agreement void (*e.g.*, on the basis of mistake, misrepresentation, duress or undue influence).

Order of the Chief Administrative Law Judge consolidating Docket Nos. ER05-483-004, ER05-977004, ER05-1358-001, ER05-1394-001, and ER05-1419-001 in response to the Commission's April 10, 2006 Order Denying Complaint in Docket No. EL06-13-000.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.